

Title: <b>Military Leave</b>	
Purpose: To provide guidelines regarding military leave for City and County of Honolulu employees.	
Issued by: Labor Relations and Training	Date: February 15, 2005
References: Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA); Hawaii Revised Statutes §76-16.5; Attorney General's Opinions (12-12-93) and (9-15-95); Civil Service Rules §8-4; Corporation Counsel's Opinion (10-27-92); CS Circular 2-96 (1-29-02); CS Letters (8-21-96), (10-6-01) and (1-9-02)	

This guideline is divided into two separate and distinct sections: 1) military leave with pay; and 2) military leave without pay.

## **MILITARY LEAVE WITH PAY**

### **I. PURPOSE**

To assist departments in administering active duty military leave with pay.

### **II. ELIGIBILITY**

Employees shall be eligible for military leave with pay when:

- A. The employee has been appointed to a position for a period of at least six months.  
Note: It is not necessary for the employee to have actually served for a period of six months at the time military service is performed to be eligible for military leave with pay.
- B. The employee is called by official military orders to active duty or to report for camps of instruction or field maneuvers as a member of the Hawaii National Guard or organized reserves, including the officers' reserve corps and the enlisted reserve corps, under call of the President of the United States or the Governor of Hawaii. Examples of active duty for training are: tours of duty by "non-prior service enlistees" (newly recruited person in the Guard or Reserve, who has not completed basic training and advanced individual training); annual training; full time training (service schools, participation in small arms competition, short tours for special projects, participation in command post exercises and ferrying aircraft); and full time duty for support of civil authorities (assisting law enforcement agencies in controlling civil disturbances and prison call-ups or assisting civil authorities in aiding victims of natural disasters). Inactive duty training usually does not involve the issuance of official military orders and will not qualify an employee for military leave with pay. Examples of inactive duty training are: unit training assemblies (weekend, split-weekend or week night), make-up training by member unable to attend regularly scheduled unit training, additional flying training periods for members on flying status and constructive attendance (employee given credit for attendance for accounting purposes in computing attendance).

### **III. COOPERATION WITH GUARD OR RESERVE UNITS**

The City and County of Honolulu (City) has always cooperated with reserve and guard components in granting leaves of absence to member employees. Department heads are encouraged to grant leaves with pay, available compensatory time-off or vacation leave, whenever operations permit, for employees requesting military leave for inactive duty training. Employees who are appointed for less than six months should be granted leave without pay and/or available vacation leave to attend active duty training.

### **IV. ENTITLEMENT**

- A. An eligible employee shall be entitled to military leave with pay for a period not to exceed fifteen working days in any calendar year.
- B. If an eligible employee is called to active duty by official military orders a second time within a calendar year (both periods of active duty must commence in the same calendar year) the employee may utilize the fifteen working days entitlement from the succeeding calendar year for such purpose under the following conditions:
  - 1. The employee has exhausted the fifteen working days of paid leave for the current calendar year.
  - 2. Any advanced leave shall not exceed fifteen working days and shall be cancelled from the succeeding calendar year by agreement of the employee in writing. (Note: Advancement of military leave for two consecutive calendar years is not allowed.)
  - 3. If the employee leaves City employment prior to completion of a year's service in the succeeding year from which leave was advanced, the employee shall be required to reimburse the City an amount equivalent to the days advanced.
- C. An employee who is advanced leave for a portion of the fifteen working days entitlement from the succeeding calendar year shall be entitled to use the remaining days in the succeeding calendar year.
- D. References to a "second" call or duty period shall mean two or more active duty periods within a calendar year.

## **MILITARY LEAVE WITHOUT PAY**

### **I. PURPOSE**

To provide departments with a general understanding of the Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA; 38 U.S.C. Chapter 43). This law provides for reemployment rights to persons who have been absent from a position of employment because of their performance of duty on a voluntary or involuntary basis in a uniformed military service and protects such employees from related employment discrimination.

## **II. APPLICABILITY**

Most City employees are covered by USERRA. Individuals holding “temporary” jobs also have reemployment rights unless their employment is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period. The employer bears the burden of proof if it denies reemployment rights to individuals holding “temporary” jobs.

## **III. GENERAL REQUIREMENTS**

Employees of the City must meet the following requirements to be entitled to reemployment rights:

- A. Provide the employer with advanced oral or written notice they are leaving the job for military training or service. No advance notice is required if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, giving of such notice is otherwise impossible or unreasonable.
- B. Length of cumulative military service does not exceed five years. (Note: Employees are eligible for five years leave without pay for military service.)
- C. Release from military service is under “honorable conditions”.
- D. Report back to the job in a timely manner or submit a timely application for reemployment.

## **IV. RIGHTS**

Under USERRA, an employee who has been absent from a position of employment due to performance of duty on a voluntary or involuntary basis in a uniformed military service has the following rights:

- A. Prompt reinstatement to the same job or a similar job with the status, pay and benefits, as well as other rights and benefits determined by seniority, that the employee attained had he/she never been absent for military service.
- B. Accrued seniority that the employee would have attained had he/she remained continuously employed.
- C. Reasonable training or retraining to refresh or upgrade skills to qualify for reemployment, if applicable.
- D. Reasonable efforts to accommodate a service related disability.

## **V. HEALTH CARE COVERAGE AND OTHER BENEFITS**

- A. The City provides health care coverage for military service of less than 31 days. USERRA requires that if the employee performs military service of more than 30 days, the employee may elect to continue health care for up to 18 months, however, the employee may be required to pay up to 102% of the full premium. Employees should check with their personnel officer at the time they are required to perform

military service in excess of 31 days as to healthcare coverage being provided. Upon reemployment, employees are entitled to immediate reinstatement in the health insurance plan with no waiting period and no exclusion of pre-existing conditions.

- B. Other benefits are described in the Department of Human Resources letter to all departments on **Rights and Benefits of City Employees Who Are Called to Active Duty (Reserve and National Guard Personnel)**, dated October 16, 2001 (attached).

## VI. **ADDITIONAL INFORMATION ON USERRA**

For general questions regarding the law (USERRA) you should contact the labor relations specialist assigned to your department. For specific questions about restrictions, limitation and exceptions in the law, you should contact either the U.S. Department of Labor's Veteran's Employment and Training Services office at 808-522-8216 or use the interactive computer program on the internet which is designed to answer questions about important aspects of the law. The internet address is **[www.dol.gov/elaws](http://www.dol.gov/elaws)**.